

# The Method And The Madness Of Trump's Tariff Scheme



Harry G. Broadman, CONTRIBUTOR

*I advise, speak and write on global markets and business strategy.* [FULL BIO](#)

Opinions expressed by Forbes Contributors are their own.



When President Trump signed an Executive Order on March 11, 2018 that set forth a plan to impose prospectively import tariffs on steel of 25% and on aluminum of 10% for countries exporting those products to the U.S., most of us trade negotiation veterans were startled. Literally. You should be too.

We were taken aback for two reasons. First, the legal basis on which the Executive Order appealed is arcane and rarely invoked. Second, the mechanics of how the tariffs would be applied—under a dangled threat, where countries would have to belly up to the table *one-by-one* and seek exclusions from Mr. Trump until the Executive Order becomes effective on March 23, 2018—are unprecedented, set in motion a dynamic that threatens to unravel the *multilaterally* agreed rules-based world trading system for which the U.S. has been the primary champion for more than 70 years, and plunges an extraordinarily wide swath of industries lying at the core of world economic growth into uncertainty.

Only Canada and Mexico were *provisionally* excluded in Trump's Executive Order—since they are in the midst of a U.S.-forced re-negotiation of the North America Free Trade Agreement (NAFTA). But if the NAFTA re-negotiations do not go Mr. Trump's way, the only two neighboring countries of the U.S. and our 2<sup>nd</sup> and 3<sup>rd</sup> largest trading partners, respectively, would also fall under the Trumpian Sword of Damocles.

Some of the smartest trade policy observers in Washington, Brussels, Tokyo, Beijing, New Delhi, Mexico City, Ottawa and Canberra, among others, are scratching their heads as to why Trump proceeded in this fashion. Actually, the answer can be found in the way the President has conducted his business dealings in the private sector for years. Regrettably, these practices are fundamentally at odds with the rules governing global trade negotiations, which, after all are among sovereign not commercial entities.

The groundwork for Trump's approach was evident the Spring of last year when Commerce Secretary Wilbur Ross initiated an "investigation" of whether imports of aluminum and steel constitute a threat to the national security of the U.S. Such an assessment is referred to as a "Section 232 Investigation" (because its legal basis is Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862)). Although there have been 26 Section 232 Investigations carried out since 1962—focused on an array of industries, including fasteners,

electrical equipment, iron ore, machine tools and petroleum—in recent decades they have seldom been undertaken. And even more rarely have they served as the basis for sanctions to restrict imports.

Trade negotiation practitioners had to be asleep if they hadn't noticed that on January 11, 2018, Ross transmitted to Trump his Section 232 Investigation report in which he recommended an across-the-board tariff on U.S. steel imports of 24%.

Why was it proposed as across-the-board? In part, because steel and aluminum are produced and exported by numerous countries; there is an extensive amount of transshipment of steel and aluminum products in supply chains between a large array of third-party countries before they come to U.S. shores; and the invocation of a threat to national security on the basis of Section 232 conveys that the sources of injury to U.S. producers is diffused, and not easily targeted as coming from a specific country or a small set of countries. In this context, employing Section 232 to tamper imports is akin to a sawed-off shotgun approach where bullets fly here and there.

Ironically, however, by *not* discriminating among countries exporting steel and aluminum to the U.S., the Trump team positioned itself to argue that on this score they're abiding by the core principle of the World Trade Organization (WTO): namely, according the *same* treatment to *all* of our trade partners; that is, on a multilateral basis. The term of art for this in trade-speak is "Most Favored Nation" (MFN) treatment (arguably not an intuitively obvious label to the uninitiated). In essence, MFN means a country is treating another country just as good as it is treating its very best trading partner.

But what one Trump hand giveth, the other taketh away.

Like the rest of us, United States Trade Representative (USTR) Robert Lighthizer knows full well that his boss only likes to negotiate bilaterally, not multilaterally. It is the only mode of negotiation that Trump knows and trusts. This stems from his career cutting his teeth on doing one-off New York City real estate deals. In fact, [as I've noted earlier in this space](#) the President has stated endlessly that he gets a better deal negotiating bilaterally.

Thus, to please the boss, Lighthizer had the Executive Order drafted so it doesn't come into effect immediately, providing Trump with the opportunity to try and peel off country-by-country over the gestation period. This is why Trump's 14-day tariff dangling ploy encompasses (i) an across-the-board (multilateral) application *coupled with* (ii) bilateral exemptions to be negotiated by the U.S. on a by-country basis.

This "Trump Tariff Policy"—his own "TTP"—not to be confused with the "Transpacific Trade Partnership", from which Trump withdrew the U.S., is surely clever craftsmanship. But it is also truly hostile to the core WTO principle of MFN. Furthermore, it fundamentally undermines any future credibility on the part of the U.S. as the world's leader pushing for open markets.

Trump may think he's out in the clear. But the really hard part for him is in two weeks as the 164 WTO members try collectively—in whole or in part—to gang up on the U.S. with sanctions. That is, unless Trump backs off; it could well (and hopefully will) happen.

Ultimately, such a turn of events will depend on who whispers in his ear last, since [Trump operates according to a "Last In, First Out" \(LIFO\) regime](#). But if he continues to stand his ground, the process promises to be an ugly one for him and the rest of us.

*Harry G. Broadman is CEO of Proa Global Partners LLC; faculty member at Johns Hopkins University; non-executive board director; and speaker. The link to this column is: <http://www.forbes.com/sites/harrybroadman>  
Contact: [www.harrygbroadman.com](http://www.harrygbroadman.com)*